

## **REMARKS**

Further and favorable reconsideration is respectfully requested in view of the foregoing amendments and following remarks.

Entry of the amendments is proper under 37 CFR §1.116, because the amendments place the application in condition for allowance and do not raise any new issue requiring further search and/or consideration. The amendments are necessary and were not earlier presented, because they are made in response to arguments raised in the final rejection. In addition, during the telephonic interview (discussed below), the Examiner indicated that the amendments would be entered. Therefore, entry of the amendments is respectfully requested.

### **I. Claim Amendments**

Claims 1-13 were pending in this application when examined. Non-elected claims 7-10, 12 and 13 were withdrawn from consideration.

Claim 1 has been amended to narrow the scope of the compounds of formula [I] to the compounds of formula [Ia] from claim 2; to narrow the definitions of R<sup>1</sup>, R<sup>2</sup>, R<sup>3</sup>, R<sup>4</sup> and R<sup>5</sup>; and to narrow the scope of the compounds of formula [II] to thiamethoxam.

Support for R<sup>1</sup> of formula [Ia] can be found on page 10, lines 12, 14 and 15 of the specification. In addition, compound (I-1) includes a trifluoromethyl group at this position, and compound (I-4) includes a halogen (chlorine) at this position.

Support for R<sup>2</sup>, R<sup>3</sup> and R<sup>4</sup> can be found on page 10, lines 19-29 of the specification. Compounds (I-1) and (I-4) further support these definitions.

Support for R<sup>5</sup> of formula [Ia] can be found on page 10, lines 3-5 and page 11, lines 6-7 of the specification. In addition, compounds (I-1) and (I-4) include an isopropyl (C<sub>3</sub>alkyl) group in this position.

Support for thiamethoxam as the compound of formula [II] can be found on page 12, line 18 of the specification.

### **II. Telephonic Interview**

Applicant appreciates the courtesies extended to Applicant's attorney by Examiner Brown during the telephonic interview held July 7, 2011.

During the interview, Applicant's attorney proposed to limit the compounds of formula [I] to compounds of formula [Ia], and to limit the compounds of formula [II] to thiamethoxam. The Examiner asserted that even though the amendments narrow the scope of the compounds in

the claimed composition, the showing of unexpected results in the specification does not appear to be commensurate in scope with the amended claims. She stated that only a composition comprising compound (I-1) or (I-4), in combination with thiamethoxam, has been shown to demonstrate unexpected results.

The Examiner recommended narrowing the scope of compounds of formula [Ia] to compound (I-1) or (I-4), or to submit additional comparative results to demonstrate that the full scope of compounds of formula [Ia], in combination with thiamethoxam, has unexpected results.

The Examiner indicated that she would enter these claim amendments if they were filed in response to the final Office Action, and she would reconsider the showing of unexpected results with her supervisor.

Applicant has carefully considered the Examiner's comments and suggestions, and submits herewith a Declaration Under 37 CFR 1.132 demonstrating that that full scope of compounds of formula [Ia], in combination with thiamethoxam, as recited in amended claim 1, has unexpected results over the art.

### **III. Claim Rejection Under 35 U.S.C. § 103**

The Examiner rejects claims 1-6 and 11 under 35 U.S.C. § 103(a) as being unpatentable over Berger et al. (US 7,696,232). As applied to the amended claims, Applicant respectfully traverses the rejection.

The insecticide composition of claim 1 comprises (i) at least one compound represented by compounds of formula [Ia], or a salt thereof, **and** (ii) thiamethoxam.

The Office Action states on page 11, lines 7-12 that "The Examiner agrees that the composition comprising both a compound represented by formula [I-1] and or [I-4] in combination with thiamethoxam exerts superior and unexpected synergistic insecticidal activity. However, the claimed genus of the compound of instant formula I is broad and the provided evidence (wherein only compounds formula [I-1] and or [I-4] were used) is not commensurate in scope with this broadly claimed genus" (emphasis in original).

Claim 1 has been amended to narrow the scope of the compounds of formula [I] to the compounds of formula [Ia], and to narrow the scope of the compounds of formula [II] to thiamethoxam.

In addition, the enclosed Declaration provides further evidence of the unexpected synergistic effects of the claimed composition. A composition comprising a compound of

formula [I-7] and thiamethoxam demonstrates unexpected synergistic effects over a compound of formula [I-7] alone and thiamethoxam alone. A compound of formula [I-7] is a compound of formula [Ia]. Please see Table 1 and page 3 of the Declaration.

Thus, the Declaration further demonstrates that a composition comprising (i) a compound of formula [Ia] and (ii) thiamethoxam has superior and unexpected synergistic insecticidal effects.

Thus, Applicant has demonstrated in the experimental results of the specification and the Declaration that a composition comprising (i) a compound of formula [I-1], [I-4] and/or [I-7], and (ii) thiamethoxam, has superior and unexpected synergistic insecticidal effects. Thus, in view of these examples, one skilled in the art would clearly recognize that the showing of unexpected results is commensurate in scope with the amended claims.

Therefore, claim 1 would not have been obvious over Berger et al.

Claims 4, 5 and 11 depend from claim 1, and thus also would not have been obvious over the reference.

Accordingly, reconsideration and withdrawal of the rejection are respectfully requested.

#### **IV. Double Patenting Rejection**

The Examiner provisionally rejects claims 1-6 and 11 on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-5 and 11 of copending U.S. Application No. 12/788,679.

Applicant has filed a Terminal Disclaimer in the copending application, thus obviating the provisional rejection.

#### **V. Third Information Disclosure Statement**

Applicant respectfully requests express consideration of the references cited in the Third Information Disclosure Statement filed May 24, 2011, and requests the Examiner to return an Examiner-initialed copy of the PTO/SB/08 form to Applicant's attorney with the next Official Action.

**VI. Conclusion**

For these reasons, Applicant takes the position that the presently claimed invention is clearly patentable over the applied references.

Therefore, in view of the foregoing amendments and remarks, it is submitted that the rejections set forth by the Examiner have been overcome, and that the application is in condition for allowance. Such allowance is solicited.

Respectfully submitted,

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